

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

THE PEPSI COLA BOTTLING GROUP, INC.¹

Employer

and

Case 6-UC-406

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS LOCAL NO. 110 a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Union-Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, a hearing was held before Patricia J. Daum, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.²

Upon the entire record in this case³, the Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ The name of the Employer appears as amended at the hearing.

² Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th St., NW., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by December 14, 1999.

³ Both the Employer and the Union timely filed briefs in this matter which have been duly considered by the undersigned.

3. Teamsters, Chauffeurs, Warehousemen and Helpers Local No. 110 a/w International Brotherhood of Teamsters, AFL-CIO (herein called “the Union”) is a labor organization within the meaning of Section 2(5) of the Act.

The Union is the collective-bargaining representative of certain employees of the Pepsi Cola Bottling Group, Inc. (herein called “the Employer” or “PBG”). When the bargaining unit was originally certified in 1989 in Case 6-RC-10191, the Employer at that time was Laurel Packaging, Inc. That unit was described as all mechanics, all production employees, all dock workers, all laboratory workers, all laborers, all sanitation employees, all truck drivers, all production coordinators, all inventory checkers;⁴ excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act. In the petition herein, the Union is seeking that two further classifications be added to the inclusions in the unit: all machine operators and bulk loaders.⁵

When the Union was originally certified in 1989, the Pepsi Cola Company was part of a co-op which owned Laurel Packaging, whose facility is located on Industrial Park Road in Johnstown, Pennsylvania. During the following years, the Pepsi Cola Company acquired an expanding ownership interest in Laurel Packaging and, in 1998, it became the sole owner. At that time, PBG⁶ recognized the Union and agreed to abide by the terms of the collective-bargaining agreement that was in effect from March 1, 1995 until February 28, 1999. In early

⁴ The record does not reflect the identities or duties of any inventory checkers previously employed in the bargaining unit.

⁵ In its brief in this matter, the Union requests that the clarification it seeks be described as including the “inventory checker/conventional loader” position rather than bulk loader, inasmuch as the existing unit description already includes the positions of inventory checkers and dock workers. Based on the record evidence and the briefs submitted by the Employer and the Union, it appears that the only positions at issue herein are the checkers and conventional truck loaders who were moved to the Laurel Packaging facility in about January 1999. There was no evidence presented regarding the requested position of machine operator.

⁶ In the prior collective-bargaining agreements, the Employer was identified as “Pepsi-Cola Company”, Laurel Packaging. The record does not reflect when the Employer’s name was changed to PBG.

1999, the parties negotiated a new collective-bargaining agreement which is in effect from March 1, 1999 until February 28, 2003.⁷

In the instant proceeding, as stated previously, the Union seeks to clarify the existing unit to include the inventory checker/conventional loader positions. There are presently five permanent employees in these positions: Bernard Paruch and Paul Reese, checkers; Bill Robertson and Pat Smith, conventional truck loaders; and Ron Slisz, who performs both jobs, splitting his time between checking and conventional truck loading. A sixth employee in this position, Jim Werner, is a temporary employee. In support of its position, the Union argues that the six employees at issue work in the same building as the bargaining unit employees performing similar work, and share such a community of interest with the unit that their positions should be considered an accretion to the existing bargaining unit. The Employer, contrary to the Union, contends that these classifications have existed for many years and have never been sought by the Union previously, that the sole difference between their present and former positions is the location of their work site, and that they do not share a sufficient community of interest with the bargaining unit employees to warrant a finding that their positions should be accreted into the existing bargaining unit.

The Employer's Operations

PBG, a Delaware corporation with its headquarters located in Summers, New York, is engaged in the manufacture, sale and distribution of soft drink products. PBG operates three facilities in Johnstown, Pennsylvania, where the employees at issue are employed. The Laurel Packaging facility (herein called the "LP" facility), located on Industrial Park Road, is the facility which has employed the bargaining unit since 1989. The Johnstown Sales facility (herein called the "JS" facility) is located across the road from LP, on Allenbill Drive. The employees of JS

⁷ As of the time of the hearing in this matter, this new collective-bargaining agreement had been agreed upon and ratified, but had not yet been formally signed by the parties. However, the parties are working under the terms and conditions of this agreement. The Employer party to this agreement is PBG, Laurel Packaging.

have never been represented by a labor organization. The third facility, Johnstown Manufacturing (herein called the “JM” facility), is also located on Allenbill Drive, next to the JS facility. The employees of JM have also never been represented by any labor organization. Each of these three operations, LP, JS and JM, are separate divisions within the PBG corporate organization, having separate management and cost accounting structures.

As previously described, PBG became the sole owner of the LP facility in 1998, and at that time recognized the Union and assumed the existing collective-bargaining agreement. Shortly after this occurred, PBG constructed a large addition to the existing building. This facility was chosen for an addition because neither the JS nor the JM facilities had adequate room for expansion. The LP facility manufactures primarily 2-liter and 3-liter bottles and 12 ounce cans of soft drinks. It contains the largest warehouse storage area of the three buildings. In addition to the manufacture and storage of the products, LP has a long dock along one side of the building where tractor-trailers are backed in for loading. As a result of the 1998 addition to the building, there are now three large bays where smaller delivery trucks can be driven inside the building for loading. The building also contains quality control laboratories, lunchrooms and locker rooms, as well as management offices.

At the LP facility, once the product is manufactured, it is moved to the storage areas to be shipped out. There are three methods of transporting product from the LP facility. The first, called “transport delivery”, occurs through the use of the large tractor-trailers. The trailers are backed up to a dock and loaded with pallets of product by forklift. The loading for these deliveries is done mainly during the day. The transport deliveries are taken to other PBG distribution centers, primarily in or near Pennsylvania. The loaders and drivers of the transport delivery area are members of the bargaining unit.⁸ Most of the products included in the transport deliveries are those products manufactured at the LP facility.

⁸ Presently, the bargaining unit consists of 38 production workers, 10 transport loaders, 18 transport drivers, 11 maintenance mechanics, 4 quality control technicians and 6 bulk loaders.

The second method of transporting product is called “bulk delivery”. The products transported in bulk deliveries are loaded onto the same type of tractor-trailers as are used in making transport deliveries. In the same manner, the tractor-trailers are backed up to the docks and pallets of products are loaded into the trailers by forklift. The difference is that, rather than being delivered to other PBG distribution centers, bulk deliveries are taken to large accounts, such as Kmart and Giant Eagle. While transport deliveries are loaded by the type of product, bulk deliveries are loaded by the order, with the first account to be visited being the last order loaded into the trailer. The deliveries made through the bulk delivery process have been pre-sold by a sales representative, and after delivery, the product is displayed and rotated in the stores by a merchandiser. The types of products shipped by bulk delivery are very similar to the types of products shipped by transport delivery. The bulk loaders work primarily at night. The bulk loaders, but not the bulk drivers, are members of the bargaining unit.⁹

The third method of transporting product is called “conventional delivery”. These deliveries are made by “conventional” trucks, which are much smaller than the tractor-trailers used in making transport and bulk deliveries. These trucks deliver to smaller accounts, such as convenience stores, gasoline stations and “mom and pop” stores. The trucks have between eight and fourteen bays, located on both sides of the truck. Each bay has a sliding door that can be raised for loading and off-loading. The bays are filled with a variety of products, including a higher proportion of 20 ounce, 24 ounce and one liter bottles than are loaded into the trailers. The conventional trucks also take a higher proportion of the non-soda drinks, such as juices and iced teas. Conventional sales representatives (“CSRs”) drive the trucks and sell and deliver the products from the bays on the truck. The products are brought to the

⁹ The bulk loading was originally performed at the JS facility. In about 1995, it was moved to the LP facility, since most of the products loaded in the bulk deliveries were manufactured at the LP facility. At that time, the bulk loaders were recognized by the Employer as “machine operators” and included in the bargaining unit. The bulk drivers have never been recognized as part of the bargaining unit and the Union has never requested that they be included. The bulk loaders are in the LP division, while the bulk drivers are in the JS division.

conventional trucks by forklift, and are loaded inside the LP facility, by the loaders at issue herein. The area where these trucks are loaded is located in the addition, which protrudes out from the original building. All of the loaders, checkers and CSRs who drive the conventional trucks are part of the JS division of PBG.

The bulk and transport loaders report primarily to product availability supervisor Terry Burd, or to product availability manager Bob Sloan. Sloan reports to LP plant manager Tom Connolly. Burd, Sloan and Connolly are all part of the LP division and work at the LP facility. The conventional loaders and checkers are supervised by Bill Nihoff, delivery supervisor for JS.¹⁰ Nihoff reports to JS area sales manager Frank Kmetz, who reports to Randy Kaiser, PBG's market unit general manager.¹¹ Kmetz's office is in the JS facility, while Nihoff has an office in the LP facility. Nihoff and Kmetz are both part of the management organization of JS.¹²

The JS division handles the sales operations for PBG in this area. They are concerned with making sales, stocking the shelves of accounts, providing displays, and loading and delivering merchandise to the accounts. All of the employees in this division¹³ work with hand-held computers. The JS division has its own management structure, separate from the LP division.

The JM facility mainly manufactures and stores certain products, such as 20 and 24 ounce bottles, juice products, one liter bottles and syrups and other products utilized at soda fountains. The products manufactured at JM are sent over to LP on jockey trucks, driven by the

¹⁰ Nihoff also supervises the bulk drivers.

¹¹ Kaiser's responsibilities cover the Employer's Johnstown-Pittsburgh business unit, which consists of several divisions of PBG, including the three divisions described herein. Kaiser's office is located in the JM facility.

¹² At the hearing, the parties stipulated, and I find, that Burd, Sloan, Connolly, Nihoff, Kmetz and Kaiser are all supervisors within the meaning of Section 2(11) of the Act, inasmuch as they all have the independent authority, inter alia, to hire, fire, assign work and issue discipline to employees.

¹³ The JS division includes the following: 8 "mega" product sales representatives; 16 customer service representatives; 24 merchandisers; 6 checkers/conventional loaders; and 11 bulk drivers.

conventional loaders and/or checkers. JM has its own management hierarchy, who ultimately report to LP plant manager Connolly. The employees who work in the JM division are not represented by any labor organization and are not at issue in this proceeding.¹⁴

As previously stated, the transport and bulk loaders both load large tractor-trailers which are backed up to the twelve docks for loading. Using electric forklifts, the transport loaders fill the trailers with various products, most of which are manufactured at the LP facility, with the rest having been brought over by jockey from the JM facility. Once the trailer is loaded, the tractor-trailer is sent out to various PBG distribution centers.

The bulk loaders also use the electric forklifts to load the trailers. Because they are loading orders from accounts rather than just quantities of the various products, the pallets that they load must first be customized. Working from a prepared order sheet, the loaders build the wooden pallets, loading the different types of drinks ordered by each account. When a pallet is completed, the loader shrink wraps the pallet with plastic so that the products do not fall off of the pallet. Each order is then loaded onto the trailer, in reverse order of the deliveries to be made.

Before the bulk loads leave the LP facility, the checkers may spot check the load.¹⁵ When the bulk drivers return, their load is checked by Reese and/or Paruch. There are also occasions when the bulk trucks return for a “reload”, after which they deliver a second trailer-full of product. These reloads may be either scheduled or emergencies, which occur when a customer has run out of a certain product and needs it immediately. Because the bulk loaders work primarily at night, they may not always be present to load the bulk trailers when there is a scheduled reload.

¹⁴ Inasmuch as the JM division employees are not at issue herein, it is unnecessary to further detail the manner in which this division operates.

¹⁵ The bulk loads are inspected by Reese and Paruch, two of the individuals who are the subject of the instant unit clarification petition.

The conventional, or “bay” trucks, are loaded inside the facility at ground level. Each bay generally is filled with a certain type of product. The loaders bring pallets that are a single type of product and fill a given bay in the conventional truck with it. They use propane-powered forklifts and rarely have a need to shrink wrap the pallets, since each pallet is usually filled with one type of beverage. Usually two loaders work on one truck at the same time, each loader filling the bays on one side of the truck.

The checkers and conventional loaders use hand-held computers while performing their work.¹⁶ Each person who uses the computers is issued a security code, without which the individual cannot log onto the computer. The loaders are given a computer-generated sheet which is used as a guide for loading the products on the conventional trucks. If the conventional loader makes any changes in the amount or types of products actually loaded, the loader notes those changes using the hand-held computer. The checker inspects the conventional trucks going out from the LP facility and spot checks the bulk trucks, and notes any changes through the use of the hand-held computer. Both the CSRs who drive the conventional trucks and the bulk delivery drivers also use the hand-held computers to enter sales, changes in orders delivered, and so forth, as they follow their routes throughout the day. When the trucks return to the LP facility, the loads, if anything is left or returned from a customer, are again inspected by the checkers, utilizing the hand-held computer. At the end of a daily schedule, the load must be reconciled, so that the paperwork reflects the correct amount of products delivered and/or returned.

The bargaining unit employees, as well as the conventional loaders and checkers, use the same lunchroom and locker rooms. All of the PBG employees in the LP, JS and JM divisions wear the same uniforms. However, the conventional loaders and checkers work a different schedule than the transport and bulk loaders. The bulk loaders work mainly at night,

¹⁶ The bulk drivers also utilize hand-held computers in their work.

having shifts either from 7 p.m. to 3 a.m. or from 8 p.m. until 4 a.m., and the transport workers work primarily daylight, from 6 a.m. until 2 p.m.. The shifts of the conventional loaders, Bill Robertson and Pat Smith, run from 3 p.m. until midnight, and the checkers each have different hours: Reese works from 4 a.m. until 12:30 p.m.; Paruch works from 9:30 a.m. until 6 p.m.; and Slisz works from 12:30 p.m. until 9 p.m.¹⁷ The bargaining unit employees have a 20 minute paid lunch, while the checkers and conventional loaders have a 30 minute unpaid lunch. The calculation of vacation pay is also different for the bargaining unit and the JS employees.

The wages of the checkers/conventional loaders are determined by management and are described in the employee handbook. Presently, they earn \$11.56 per hour. The hourly wages of the bulk and transport loaders are negotiated and described in the collective-bargaining agreement, and presently are \$11.53 per hour. The bargaining unit jobs are bid and are awarded based on competency and seniority, with seniority being the determining factor, while job bids for the checkers/conventional loaders are awarded based on various criteria including skill, seniority, discipline, attendance and past performance. In layoff situations, the bargaining unit employees are laid off and recalled by seniority and department and have bumping rights. The checkers/conventional loaders are laid off first through volunteers, then by a combination of seniority, ability and work record, and there are no bumping rights.

The bargaining unit employees' vacation pay is determined from a weekly average for the previous year; the checkers/conventional loaders' vacation pay is an hourly rate times 40. The computation and amount paid for sick and personal days is also different for the two groups, as is the amount paid for holidays. These computations are negotiated for the bargaining unit, and determined by management for the checkers/conventional loaders. Likewise, the collective-bargaining agreement allows for \$300 per week in short term disability for bargaining unit employees. The checkers/conventional loaders can receive two thirds of the

¹⁷ The record does not reflect the hours worked by temporary employee Jim Werner.

prior year's earnings divided by 52, with a maximum amount of \$350 per week for short term disability.

The three divisions each have separate meetings which are attended by the employees of that division. Thus, the LP employees, including the transport drivers and loaders and the bulk loaders, attend meetings at the LP facility. These meetings are held about twice a month, and are usually run by Burd. Occasionally, Nihoff attends a meeting but does not take an active part. The checkers and conventional loaders do not attend these meetings. Rather, they attend meetings at the JS facility, along with other JS employees.

In general, there is no interchange of work between the conventional loaders and checkers and the bulk and transport loaders. Each group has their assigned tasks, and when someone is needed to fill in, a substitute is selected from their own division of PBG by their supervisors. The jockey truck, usually driven over from the JM facility by Reese or Paruch, is unloaded by the conventional loaders. Prior to the move to the LP facility, the conventional loaders unloaded the jockey trucks at the JS facility, so this practice has not changed since the move. However, occasionally, the jockey truck arrives at a time when there are no conventional loaders working, in which case the transport or bulk loaders will unload the jockey truck.

As previously described, sometimes there is a reload on a bulk truck, i.e. when a bulk truck returns to the facility to be loaded for a second trip during a day. If the reload occurs at night, then the second load is prepared and loaded into the trailer by the bulk loaders. If the reload occurs during the day, the transport loaders will do the bulk loading, unless they are too busy with the transport loading, in which case the conventional loaders have sometimes assisted in the reloading. However, sometimes the reload is an unplanned, or emergency reload. In these cases, the conventional loaders perform the reloading, since they have the ability to record the inventory information into the hand-held computers. In general, the

transport, bulk and conventional loaders each have their assigned work to perform, and there is rarely, if ever, interchange between the bulk or transport loaders and the conventional loaders.¹⁸

With regard to job bidding, it appears that jobs openings are posted throughout all three facilities. However, if an employee from JM or JS applies for an opening in a bargaining unit position at LP, they are treated in the same manner as any individual applying from off-the-street. The bargaining unit employees are given priority for bids on jobs within the LP facility. Likewise, if an employee from the LP facility applies for a job opening at either JM or JS, they are not given any priority and are treated the same as off-the-street applicants.

The Appropriate Unit

As stated above, the Union filed the instant petition requesting that the unit be clarified to include the six checker/conventional loader employees of the JS division who are now working at the LP facility. The Union contends that these six employees are now working at the same location as the bargaining unit, and do essentially the same work; therefore, they share a strong community of interest with the bargaining unit employees so as to require their inclusion as an accretion to the existing bargaining unit. To the contrary, the Employer argues that the work performed by these six employees is different from that performed by the bargaining unit; that nothing has changed with regard to the work of these employees other than the location of their work; and that they do not share an overwhelming community of interest with the bargaining unit employees such that they would be an accretion to the existing unit.

The Board has repeatedly followed a restrictive policy with regard to accretions to existing units because the employees who are accreted to an existing unit are not afforded the opportunity to vote in an election to choose their bargaining representative. Compact Video Stores, Inc., 284 NLRB 117, 119 (1987); Super Valu Stores, Inc., 283 NLRB 134 (1987). Thus,

¹⁸ The record reflects that some transport loaders perform the work of loading some conventional trucks for McAllister Company, a soft drink distributor. It appears that the transport loaders have been loading McAllister's trucks for about 20 years, long before the conventional trucks were moved to the LP facility for loading. The McAllister trucks are not owned or operated by PBG.

the Board will find an accretion "...only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted [footnotes omitted]."¹⁹ Compact Video Stores, Inc., supra, quoting Safeway Stores, 256 NLRB 918 (1981).

The Board has identified certain factors which are critical to finding an accretion. These factors include interchange of employees; day-to-day supervision of employees; similarity of terms and conditions of employment; similarity of skills and functions; physical, functional and administrative integration; and bargaining history. Compact Video Stores, Inc., supra, and cases cited therein. Further, the Board has stated that two of these factors, the degree of interchange of employees and whether the day-to-day supervision of the employees is the same as in the group to be accreted, are especially important to the finding of an accretion. Towne Ford Sales and Town Imports, 270 NLRB 311, 312 (1984) and cases cited therein.

Further, the Board has held that unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals in a newly established classification of disputed unit placement, or where there have been recent, substantial changes in the duties and responsibilities of individuals in an existing classification so as to create a real doubt as to whether individuals in such classification continue to fall within the included or excluded category that they occupied in the past, but is not appropriate when it would upset the established practice of parties concerning the unit placement of various individuals. Bethlehem

¹⁹ In its brief, the Union cites Boston Gas Company, 235 NLRB 1354 (1978), in support of the proposition that accretion is the proper method to determine issues arising out of the consolidation of operations where there is no basic change to the nature of the operation. In that case, the Employer owned several gas companies, each represented by different labor organizations. The Employer consolidated the customer service operators from various companies to one location. In that case, the operators still performed the same duties, but they now all had common supervision, common location and common functions. Thus, that case is inapposite from the factual situation herein, where nothing has changed with regard to the checkers/conventional loaders except for the location of their work. There is no consolidation involved in the instant case.

Steel Corporation, 329 NLRB No. 32 (September 27, 1999), quoting Union Electric Co., 217 NLRB 666, 667 (1975).

In the instant case, with regard to the two particularly significant factors in an analysis of community of interest, the day-to-day supervision of employees and the degree of employee interchange, the record herein does not support a finding of accretion. In this case, the day-to-day supervision of the checkers and conventional loaders is different from the bulk and transport loaders. The checkers and conventional loaders are supervised by Nihoff, and are part of the JS division's organizational structure. The bulk and transport loaders are supervised by Burd, and are part of the LP organizational structure. Although there may be rare instances where an employee from one division might be asked by a supervisor from another division to do something, such occasions are isolated and not routine. Further, the employees do not interchange with each other. When an employee is absent, another employee from that division is asked to fill in as a substitute. Again, there may be rare and isolated instances where an employee from one division assists with the work performed by the other division, but such instances are not routine and only occur in emergency situations.

In assessing the other factors relating to community of interest, the record further also indicates that a finding of accretion is not appropriate herein. Thus, the terms and conditions of employment of the checkers/conventional loaders differ significantly from those of the bargaining unit employees. The wages, hours, job bidding criteria, layoffs and recalls, computation of vacation time and pay, overtime, computation of sick and personal days, computation of holiday pay, and computation of short term disability are different for the two groups. While the checkers/conventional loaders now work in the same building as the bargaining unit employees who are part of LP, they are supervised, managed and administratively connected to JS. Further, while both groups load trucks, the JS employees utilize the hand-held computers and are responsible for maintaining inventory records. Moreover, the checkers are only responsible for reviewing the loads as the bulk and

conventional trucks leave and return to the facility; they do not load trucks and the LP loaders never check the incoming or outgoing loads.²⁰ Finally, the bargaining history indicates that the Union has never considered the checkers/conventional loaders as part of the bargaining unit. While there may have been discussions between the parties concerning this issue, the record does not reflect that the Union took any formal action seeking their inclusion in the unit prior to the instant petition.²¹

Rather, the checkers/conventional loaders at issue have been excluded from the bargaining unit since the unit was certified in 1989. The disputed classifications have not undergone recent, substantial changes other than the physical relocation of their work into the LP facility. They do the same work, under the same supervision, with the same terms and conditions of employment, as they did before their worksite was moved to the LP facility in early 1999.²² The relocated checkers and conventional loaders have more contact with the

²⁰ In its brief, the Employer asserts that the checkers are guards within the meaning of the Act. Although they do review each load as it leaves from or returns to the facility, I find no record evidence that they enforce against employees and other persons rules to protect the property of the Employer or the safety of individuals on the premises. See Petroleum Chemicals, Inc., 121 NLRB 630 (1958). Thus, I find that the checkers are not guards within the meaning of the Act. See J.C. Penney Co., Inc., 312 NLRB 32 (1993).

²¹ In its brief, the Union cites Lammert Industries v. N.L.R.B., 578 F.2d 1223 (7th Cir. 1978), in support of its position that accretion is appropriate. In that case, the Employer owned two facilities, one in which the employees were represented by a union and one where they were unrepresented, although the employees at both facilities performed identical work. The Employer closed both facilities and consolidated them into one, new location. The Employer transferred nineteen bargaining unit employees and seven employees who had been unrepresented to the new facility. At the new location, all 26 employees performed the same work under the same supervision, with identical terms and conditions of employment. Under these circumstances, it was found that the seven previously unrepresented employees were an accretion to the existing bargaining unit. In the present case, the checkers/conventional loaders have only moved physically to the LP facility. They still perform the job duties they performed at the JS facility, under supervision from JS, and have many different terms and conditions of employment from the employees in the existing LP bargaining unit. Thus, I find Lammert Industries v. N.L.R.B. to be inapposite to the facts herein.

²² In its brief, the Employer points out that the employees at issue herein were moved to the LP facility prior to the negotiations for the newest collective-bargaining agreement during the Spring of 1999, and the Union never attempted to negotiate the inclusion of these disputed employees during those negotiations. Inasmuch as I find that an accretion is not appropriate herein based on other factors, I deem it unnecessary to pass on the Employer's contention that, for this reason, the Union was precluded from initiating the instant proceeding.

bargaining unit employees than they did before their worksite was moved to the LP facility, but they are performing the same job functions as they previously performed, with separate supervision and virtually no interchange with bargaining unit employees. Thus, the only change that has occurred has been the location of their work.

In sum, based on the above and the record as a whole, I do not find that the checkers/conventional loaders share an overwhelming community of interest with the employees in the existing bargaining unit, nor do I find that the disputed employees have little or no separate group identity, as required by the Board's accretion policy.²³ Rather, based upon the parties' historical exclusion of these positions from the bargaining unit and the above-detailed lack of recent, substantial changes in the disputed positions, beyond their relocation to the LP facility, I find that no valid issue has been raised concerning the unit placement of the checkers/conventional loaders that is appropriate for resolution in a unit clarification proceeding, and I shall, therefore, dismiss the petition in the instant case.

²³ In John P. Scripps Newspaper Corp. d/b/a The Sun, 329 NLRB No. 74 (September 30, 1999), the Board recently discussed the standards to be used when analyzing unit clarification proceedings involving bargaining units defined by the work performed. Inasmuch as the unit herein is not defined by the work performed, that case is inapplicable herein.

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

Dated at Pittsburgh, Pennsylvania this 30th day of November 1999.

/s/ Gerald Kobell

Gerald Kobell
Regional Director, Region Six

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